

## **Maintenance and Support Agreement**

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector, North America Group ("Motorola" or "Seller") having a place of business at 6450 Sequence Drive; San Diego, CA 92121; and **City of College Station** ("Customer"), having a place of business at 1101 Texas Avenue, College Station, Tx 77842, enter into this Maintenance and Support Agreement ("Agreement"), pursuant to which Customer will purchase and Seller will sell the maintenance and support services as described below and in the attached Exhibits. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows:

### **Section 1 EXHIBITS**

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	Description of Covered Products
Exhibit B	Support Plan
Exhibit C	Support Plan Options and Pricing Worksheet

### **Section 2 DEFINITIONS**

"Equipment" means the physical hardware purchased by Customer from Seller pursuant to a separate System Agreement, Products Agreement, or other form of agreement. Equipment may include the central processing unit, workstation hardware, and peripheral equipment.

"Error" means any failure of the Program(s) to conform in any material respect to its or their published specifications.

"Error Correction" means Seller shall be responsible for using all reasonable diligence to correct verifiable and reproducible Errors when reported to Seller in accordance with its standard reporting procedures. The Error Correction, when completed, may be provided in the form of a "temporary fix" consisting of sufficient programming and operating instructions to implement the Error Correction.

"Motorola" means Motorola, Inc., a Delaware corporation.

"Motorola Software" means Software that Motorola or Printrak owns. The term includes Product Releases, Standard Releases, and Supplemental Releases.

"Non-Motorola Software" means Software that a party other than Motorola or Printrak owns.

"Optional Technical Support Services" means fee-based technical support services that are not covered as part of the standard Technical Support Services.

"Principal Period of Maintenance" or "PPM" means the specified days, and times during the days, that maintenance and support services will be provided under this Agreement. The PPM selected by Customer is indicated in the Support Plan Options and Pricing Worksheet, Exhibit C.

"Printrak" means Printrak International Incorporated, a Motorola company.

"Products" means the Equipment and Software provided by Seller.

"Releases" means an Update or Upgrade to the Motorola Software and are characterized as "Supplemental Releases," "Standard Releases," or "Product Releases." A "Supplemental Release" is defined as a minor release of Motorola Software that contains primarily error corrections to an existing Standard Release and may contain limited improvements that do not affect the overall structure of the Motorola Software. Depending on Customer's specific configuration, a Supplemental Release might not be applicable. Supplemental Releases are identified by the third digit of the three-digit release number, shown here as underlined: "1.2.3". A "Standard Release" is defined as a major release of Motorola Software that contains product enhancements and improvements, such as new databases, modifications to databases, or new servers/requesters. A Standard Release may involve file and database conversions, System configuration changes, hardware changes, additional training, modifications of Software license terms, on-site installation, and System downtime. Standard Releases are identified by the second digit of the three-digit release number, shown here as underlined: "1.2.3". A "Product Release" is defined as a major release of Motorola Software considered to be the next generation of an existing product or a new product offering. Product Releases are identified by the first digit of the three-digit release number, shown here as underlined: "1.2.3".

"Services" means those maintenance and support services described in the Support Plan, Exhibit B, and provided under this Agreement.

"Software" means the Motorola Software and Non-Motorola Software that is furnished with the System or Equipment.

"Staff: Seller shall maintain a trained staff capable of rendering the services set forth in this Agreement.

"Standard Business Day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. local time, excluding established Motorola holidays.

"Standard Business Hour" means a sixty (60) minute period of time within a Standard Business Day(s).

"Start Date" means the date upon which this Agreement begins. The Start Date is specified in the Support Plan Options and Pricing Worksheet, Exhibit C.

"System" means the Products and services provided by Seller as a system as more fully described in the Technical and Implementation Documents attached as exhibits to a System Agreement between Customer and Seller (or Motorola).

"Technical Support Services" means the remote telephonic support provided by Seller on a standard and centralized basis concerning the Products, including diagnostic services and troubleshooting to assist Customer in ascertaining the nature of a problem being experienced by the Customer, minor assistance concerning the use of the Software (including advising or assisting the Customer in attempting data/database recovery, database set up, client-server advice), and assistance or advice on installation of Releases provided under this Agreement.

"Update" means a Supplemental Release or a Standard Release.

"Upgrade" means a Product Release.

### **Section 3      SCOPE AND TERM OF SERVICES**

3.1. In accordance with the provisions of this Agreement and in consideration of the payment by Customer of the price for the Services, Seller will provide to Customer the Services in accordance with Customer's selections as indicated in the Support Plan Options and Pricing Worksheet, Exhibit C, and such Services will apply only to the Products described in the Description of Covered Products, Exhibit A.

3.2. Unless the Support Plan Options and Pricing Worksheet, Exhibit C, expressly provides to the contrary, the term of this Agreement is one (1) year, beginning on the Start Date. This annual

maintenance and support period will automatically renew upon the anniversary date for successive one (1) year periods unless (a) either party notifies the other of its intention to not renew the Agreement not less than thirty (30) days before the anniversary date or (b) this Agreement is terminated for default by a party.

3.3. This Agreement covers all copies of the specified Software listed in the Description of Covered Products, Exhibit A, that are licensed by Seller to Customer. If the price for Services is based upon a per unit fee, such price will be calculated on the total number of units of the Software that are licensed to or used by Customer as of the beginning of the annual maintenance and support period. If, during an annual maintenance and support period, Customer acquires additional units of the Software that is covered by this Agreement, the price for maintenance and support services for those additional units will be calculated and added to the total price if and when the annual maintenance and support period is renewed. Seller may adjust the price of the maintenance and support services effective as of a renewal if it provides to Customer notice of the price adjustment at least forty-five (45) days before the expiration of the annual maintenance and support period. If Customer notifies Seller of its intention not to renew this Agreement as permitted by Section 3.2 and later wishes to reinstate this Agreement, it may do so with Seller's consent provided (a) Customer pays to Seller the amount that it would have paid if Customer had kept this Agreement current, (b) Customer ensures that all applicable Equipment is in good operating conditions at the time of reinstatement, and (c) all copies of the specified Software listed in the Description of Covered Products, Exhibit A, are covered.

3.4. When Seller performs Services at the location of installed Products, Customer agrees to provide to Seller, at no charge, a non-hazardous environment for work with shelter, heat, light, and power, and with full and free access to the covered Products. To the extent permitted by any other license agreements, customer will provide all reasonable information in its possession pertaining to the hardware and software with which the Products are interfacing to enable Seller to perform its obligations under this Agreement.

3.5. All Customer requests for covered Services will be made initially with the call intake center identified in the Support Plan Options and Pricing Worksheet, Exhibit C.

3.6. Seller will provide to Customer Technical Support Services and Releases as follows:

3.6.1. Seller will provide unlimited Technical Support Services during the PPM for basic service. Depending upon the Customer's selection as indicated in the Support Plan Options and Pricing Worksheet, Exhibit C, the applicable PPM may be greater than the PPM for basic service. Any non-standard Technical Support Services, or standard Technical Support Services that are performed by Seller outside the contracted PPM, shall be billed at the pre-agreed hourly rates set forth in this Agreement. Direct service for Residual Error correction and Technical Support Services will be to investigate specifics about the functioning of covered Products to determine whether there is a defect in the Product, not for training, and will not be used in lieu of training on the covered Products.

3.6.2. Unless the Support Plan Options and Pricing Worksheet, Exhibit C, expressly provides to the contrary, Seller will notify Customer promptly when a Supplemental or Standard Release is issued. Promptly after receipt of a request from Customer, Seller will provide, without additional license fees, available Supplemental or Standard Releases for each copy of the Programs(s) being maintained under this agreement, but Customer must pay for any installation or other services and any necessary Equipment or third party software provided by Seller in connection with such Supplemental or Standard Release. Supplemental or Standard Releases will be accompanied by such documentation and instructions concerning such Releases, and any related changes to end user materials, as Licensor reasonably deems necessary for the use of such Releases. Seller shall provide reasonable telephone assistance to help Customer install and operate each new Release. Any services will be performed in accordance with a mutually agreed schedule.

3.6.3 Seller will notify Customer of an available Product Release when and as it is made available to other customers generally for an additional charge. Seller will permit Customer to obtain up

to (1) copy of each Product Release for each copy of the Program(s) being maintained under this Agreement for fifteen percent (15%) off the retail list rate offered to customers who do not subscribe for maintenance from Seller. Any services will be performed in accordance with a mutually agreed schedule.

3.6.4 Seller does not warrant that a Release will meet Customer's particular requirement, operate in the combinations that Customer will select for use, be uninterrupted or error-free, be backward compatible, or that all errors will be corrected. Full compatibility of a Release with the capabilities and functions of earlier versions of the Software may not be technically feasible. If it is technically feasible, services to integrate these capabilities and functions to the updated or upgraded version of the Software may be purchased at Customer's request on a time and materials basis at Seller's then current rates for professional services.

3.7. The maintenance and support Services described in this Agreement are the only covered services. Unless Optional Technical Support Services are purchased, these Services specifically exclude and Seller shall not be responsible for:

3.7.1. Any service work required due to incorrect or faulty operational conditions, including but not limited to Equipment not connected directly to an electric surge protector, or not properly maintained in accordance with the manufacturer's guidelines.

3.7.2. The repair or replacement of Products or parts resulting from failure of the Customer's facilities, Customer's personal property and/or devices connected to the System (or interconnected to devices) whether or not installed by Seller's representatives.

3.7.3. The repair or replacement of Equipment that has become defective or damaged due to physical or chemical misuse or abuse, Customer's negligence, or from causes such as lightning, power surges, or liquids.

3.7.4. Any transmission medium, such as telephone lines, computer networks, or the worldwide web, or for Equipment malfunction caused by such transmission medium.

3.7.5. Accessories, custom or Special Products; modified units; or modified Software.

3.7.6. The repair or replacement of parts resulting from the tampering by persons unauthorized by Seller or the failure of the System due to extraordinary uses.

3.7.7. Operation and/or functionality of Customer's personal property, equipment, and/or peripherals and any application software not provided by Seller.

3.7.8. Services for any replacement of Products or parts directly related to the removal, relocation, or reinstallation of the System or any System component.

3.7.9. Services to diagnose technical issues caused by the installation of unauthorized components or misuse of the System.

3.7.10. Operational supplies, including but not limited to, printer paper, printer ribbons, toner, photographic paper, magnetic tapes and any supplies in addition to that delivered with the System; battery replacement for uninterruptible power supply (UPS); office furniture including chairs or workstations.

3.7.11. Third-party software unless specifically listed on the Description of Covered Products, Exhibit A.

3.7.12. Support of any interface(s) beyond Seller-provided port or cable, or any services that are necessary because third party hardware, software or supplies fail to conform to the specifications concerning the Products.

3.7.13. Services related to customer's failure to back up its data or failure to use an UPS system to protect against power interruptions.

3.7.14. Any design consultation such as, but not limited to, configuration analysis, consultation with Customer's third-party provider(s), and System analysis for modifications or Upgrades which are not directly related to a Residual Error report.

3.8. The Customer hereby agrees to:

3.8.1. Maintain any and all electrical and physical environments in accordance with the System manufacturer's specifications.

3.8.2. Provide standard industry precautions (e.g. back-up files) ensuring database security, per Seller's recommended backup procedures.

3.8.3. Ensure System accessibility, which includes physical access to buildings as well as remote electronic access. Remote access can be stipulated and scheduled with customer; however, remote access is required and will not be substituted with on-site visits if access is not allowed or available.

3.8.4. Appoint one or more qualified employees to perform System Administration duties, including acting as a primary point of contact to Seller's Customer Support organization for reporting and verifying problems, and performing System backup. At least one member of the System Administrators group should have completed Seller's End-User training and System Administrator training (if available). The combined skills of this System Administrators group should include proficiency with: the Products, the system platform upon which the Products operate, the operating system, database administration, network capabilities such as backing up, updating, adding, and deleting System and user information, and the client, server and stand alone personal computer hardware. The System Administrator shall follow the Residual Error reporting process described herein and make all reasonable efforts to duplicate and verify problems and assign a Severity Level according to definitions provided herein. Customer agrees to use reasonable efforts to ensure that all problems are reported and verified by the System Administrator before reporting them to Seller. Customer shall assist Seller in determining that errors are not the product of the operation of an external system, data links between system, or network administration issues. If a Severity Level 1 or 2 Residual Error occurs, any Customer representative may contact Seller's Customer Support Center by telephone, but the System Administrator must follow up with Seller's Customer Support as soon as practical thereafter.

3.9. In performing repairs under this Agreement, Seller may use parts that are not newly manufactured but which are warranted to be equivalent to new in performance. Parts replaced by Seller shall become Seller's property.

3.10 Upon 30 days advance written notice at a time mutually agreeable to Seller and Customer, Customer shall permit Seller reasonable access to audit Customer's records and operations pertinent to the Services, Products, and usage of application and data base management software provided under this Agreement during Customer's normal business hours provided that Seller does not unduly interfere with Customer's business operations. The purpose and scope of such audits are to verify if Seller is providing above-contract Services and, if the Price for Services is based upon a per unit fee, whether it is being correctly calculated on the total number of units in accordance with Section 3.3 above. If the results of any such audit indicate that Price has been understated or overstated, Seller may correct the Price and immediately invoice or refund Customer for the difference. Seller will limit the number of audits to no more than once (1) in any three year period.

3.11. If Customer replaces, upgrades, or modifies Equipment that is covered by this Agreement, or replaces, upgrades, or modifies hardware or software that interfaces with the covered Products, Seller will have the right to adjust the price for the Services to the appropriate current price for the new configuration.

#### **Section 4. RIGHT TO SUBCONTRACT AND ASSIGN**

Seller may assign its rights and obligations under this Agreement and may subcontract any portion of Seller's performance called for by this Agreement upon prior written notice to Customer and written consent of Customer. Customer agrees to not unreasonably withhold or delay consent to an assignment or subcontract.

#### **Section 5. PRICING, PAYMENT AND TERMS**

5.1 Prices in United States Dollars are shown in the Support Plan Options and Pricing Worksheet, Exhibit C. Unless this exhibit expressly provides to the contrary, the price is payable annually in advance. Seller will provide to Customer an invoice, and Customer will make payments to Seller within thirty (30) days after the date of receipt of each invoice. During the term of this Agreement, Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a United States financial institution.

5.2. Overdue invoices will bear simple interest at the rate of ten percent (10%) per annum, unless such rate exceeds the maximum allowed by law, in which case it will be reduced to the maximum allowable rate.

5.3 If Customer requests, Seller may provide services outside the scope of this Agreement or after the termination or expiration of this Agreement and Customer agrees to pay for those services. These terms and conditions and the prices in effect at the time such services are rendered will apply to those services.

5.4 Price(s) are exclusive of any taxes, duties, export or customs fees, including Value Added Tax or any other similar assessments imposed upon Seller. If such charges are imposed upon Seller, Customer shall reimburse Seller upon receipt of proper documentation of such assessments.

#### **Section 6. LIMITATION OF LIABILITY**

With the exception of Section 7 (Title and Indemnity), this limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. . Except for personal injury or death, the parties' (including any of their affiliated companies) total liability arising from this Agreement will be limited to the direct damages recoverable under law, but not to exceed the price of the maintenance and support services being provided for one (1) year under this Agreement. **ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT NEITHER SELLER (INCLUDING ANY OF ITS AFFILIATED COMPANIES) NOR CUSTOMER WILL BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE SYSTEM, EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY SELLER PURSUANT TO THIS AGREEMENT.** This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than four (4) years after the accrual of such cause of action.

#### **Section 7. TITLE AND INDEMNITY. .**

Seller warrants that it owns the software, including all associated intellectual property rights, or otherwise has the right to grant Customer the right and license provided in this Agreement, and that as of the date of this Agreement, to the best of Seller's knowledge, neither the software nor the documentation infringe on any valid patents, copyrights, trademarks, or other proprietary rights of any third parties.

Seller, at its own expense, will defend and indemnify and hold harmless Customer against any and all claims, losses, damages or expense (including court costs and reasonable attorney fees) arising out of or relating to a claim that the Software infringe a United States patent or copyright or misappropriate trade secrets protected under United States law, provided Customer (a) gives Seller prompt written notice of such claims, (b) permits Seller to control the defense and settlement of the claims, and (c) provides all reasonable assistance to Seller in defending or settling the claims

As to Software which is subject to a claim of infringement or misappropriation, Seller may (a) obtain the right of continued use of the Software for Customer or (b) replace or modify the Software to avoid the claim. If neither alternative is available on commercially reasonable terms, then, at the request of Seller, any applicable Software license and its charges will end, Customer will stop using the applicable Software, and Customer will return to Seller all or destroy all copies of the applicable Software, and will certify in writing to Seller that such return or destruction has been completed. Upon return or Seller's receipt of certification of destruction, Seller will give Customer a credit for the price paid to Seller for the returned or destroyed Software, less a reasonable offset for use and/or obsolescence.

#### **Section 8.      DEFAULT/TERMINATION**

If Motorola breaches a material obligation under this Agreement (unless Customer or a Force Majeure causes such failure of performance) files a petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law or petition to take advantage of any insolvency action, makes an assignment for the benefit of its creditors, consents to the appointment of a receiver for itself or the whole or substantially all of its property, is adjudicated a bankrupt on a petition in bankruptcy filed against it, files a petition or answer seeking reorganization or arrangement or other aid or relief under any bankruptcy or insolvency laws for the relief of debtors, or is the subject of an order, judgment or decree entered by a court of competent jurisdiction appointing a receiver for Motorola or the whole or substantially all of its property or approval of a petition filed against Motorola seeking reorganization or arrangement of Motorola under any bankruptcy or insolvency laws or any other law for the relief of debtors, Customer may consider Motorola to be in default. If Customer asserts a default, it will give Motorola written and detailed notice of the default. Motorola will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to Customer. If Motorola provides a cure plan, it will begin implementing the cure plan immediately after receipt of Customer's approval of the plan.

7.2. If Customer breaches a material obligation under this Agreement (unless Motorola or a Force Majeure causes such failure of performance); if Customer breaches a material obligation under the Software License Agreement that governs the Software covered by this Agreement; or if Customer fails to pay any undisputed amount when due under this Agreement, indicates that it is unable to pay any amount when due, indicates it is unable to pay its debts generally as they become due, files a voluntary petition under bankruptcy law, or fails to have dismissed within ninety (90) days any involuntary petition under bankruptcy law, Motorola may consider Customer to be in default. If Motorola asserts a default, it will give Customer written and detailed notice of the default and Customer will have thirty (30) days thereafter to (i) dispute the assertion, (ii) cure any monetary default (including interest), or (iii) provide a written plan to cure the default that is acceptable to Motorola. If Customer provides a cure plan, it will begin implementing the cure plan immediately after receipt of Motorola's approval of the plan.

7.3. If a defaulting party fails to cure the default as provided above in Sections 7.1 or 7.2, unless otherwise agreed in writing, the non-defaulting party may terminate any unfulfilled portion of this Agreement and may pursue any legal or equitable remedies available to it subject to the provisions of Section 6 above.

7.4. Upon the expiration or earlier termination of this Agreement, Customer and Seller shall immediately deliver to the other Party, as the disclosing Party, all Confidential Information of the other, including all copies thereof, which the other Party previously provided to it in furtherance of this Agreement. Confidential Information shall include: (a) proprietary materials and information regarding technical plans; (b) any and all other information, of whatever type and in whatever medium including data, developments, trade secrets and improvements, that is disclosed by Seller to Customer in connection with this Agreement; (c) all geographic information system, address, telephone, or like records and data provided by Customer to Seller in connection with this Agreement that is required by law to be held confidential.

## **Section 9. GENERAL TERMS AND CONDITIONS**

8.1. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service), or by facsimile with correct answerback received, and shall be effective upon receipt.

Customer: CITY OF COLLEGE STATION  
Attn: OTIS Director

Seller: Motorola, Inc.  
Attn: Contracts & Compliance Manager  
6450 Sequence Drive  
San Diego, CA 92121

With a copy to:

City Attorney  
1101 Texas Avenue  
College Station, TX 77845

8.2. Neither party will be liable for its non-performance or delayed performance if caused by an event, circumstance, or act of a third party that is beyond such party's reasonable control.

8.3. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

8.4. Neither party may assign any of its rights under this Agreement without the other party's prior consent. The parties each agree to not unreasonably withhold or delay consent to an assignment.

8.5. This Agreement, including the exhibits, constitutes the entire agreement of the parties regarding the covered maintenance and support services and supersedes all prior and concurrent agreements and understandings, whether written or oral, related to the services performed. Neither this Agreement nor the Exhibits may not be altered, amended, or modified except by a written agreement signed by authorized representatives of both parties. Customer agrees to reference this Agreement on all purchase orders issued in furtherance of this Agreement. Neither party will be bound by any terms contained in Customer's purchase orders, acknowledgements, or other writings (even if attached to this Agreement).



8.6. This Agreement will be governed by the laws of the State of Texas. Venue shall lie in a court of competent jurisdiction in Brazos County, Texas. This agreement is fully performable in College Station, Brazos County, Texas.

**Section 9. CERTIFICATION DISCLAIMER**

Seller specifically disclaims all certifications regarding the manner in which Seller conducts its business or performs its obligations under this Agreement, unless such certifications have been expressly accepted and signed by an authorized signatory of Seller.

**Section 10. COMPLIANCE WITH APPLICABLE LAWS**

The Parties shall at all times comply with all applicable regulations, licenses and orders of their respective countries relating to or in any way affecting this Agreement and the performance by the Parties of this Agreement. Each Party, at its own expense, shall obtain any approval or permit required in the performance of its obligations. Neither Seller nor any of its employees is an agent or representative of Customer

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed as of the day and year first written above.

**Seller**

**Customer**

By: \_\_\_\_\_



By: \_\_\_\_\_

Name: Robert Schassler

Name: \_\_\_\_\_

Title: MCEI Vice President

Title: \_\_\_\_\_

Date: 6-28-03

Date: \_\_\_\_\_

REVIEWED AND APPROVED  
AS TO FORM

19 25 6-28-03  
DAVID LITTLE DATE

MOTOROLA  
CONTRACTS AND COMPLIANCE DEPT.

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**Exhibit A DESCRIPTION OF COVERED PRODUCTS**

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**MAINTENANCE AND SUPPORT AGREEMENT** \_\_\_\_\_**CUSTOMER:** City of College Station, TX

The following table lists the Products under maintenance coverage:

<b>Product</b>	<b>Description</b>	<b>Version</b>	<b>Qty</b>
Premier Message Switch Software	1-100 Server Level		1
Premier MDC	Mobile Client License		57
TalkThru/RF	Server Software Module		1
TalkThru/RF	Mobile Client Module		12
In-Vehicle Paging	Server Software Module		1
In-Vehicle Paging	Mobile Client Module		34
CAD Interface	Motorola API Only		1

**MAINTENANCE AND SUPPORT AGREEMENT****Exhibit B SUPPORT PLAN**

This Support Plan is a Statement of Work that provides a description of the support to be performed.

1. **Services Provided.** The Services provided are based on the Severity Levels as defined herein. Each Severity Level defines the actions that will be taken by Seller for Response Time, Target Resolution Time, and Resolution Procedure for reported errors. Response Times for Severity Levels 1 and 2 are based upon voice contact by Customer, as opposed to written contact by facsimile or letter. Resolution Procedures are based upon Seller's procedures for Service as described below.

SEVERITY LEVEL	DEFINITION	RESPONSE TIME	TARGET RESOLUTION TIME
1	Total System Failure - occurs when the System is not functioning and there is no workaround; such as a Central Server is down or when the workflow of an entire agency is not functioning.	Telephone conference within 1 hour of initial voice notification	Resolve within 24 hours of initial notification
2	Critical Failure - Critical process failure occurs when a crucial element in the System is not functioning that does not prohibit continuance of basic operations and there is usually no suitable work-around. Note that this may not be applicable to intermittent problems.	Telephone conference within 3 Standard Business Hours of initial voice notification	Resolve within 7 Standard Business Days of initial notification
3	Non-Critical Failure - Non-Critical part or component failure occurs when a System component is not functioning, but the System is still useable for its intended purpose, or there is a reasonable workaround.	Telephone conference within 6 Standard Business Hours of initial notification	Resolve in next Supplemental Release within 180 days following verification
4	Inconvenience - An inconvenience occurs when System causes a minor disruption in the way tasks are performed but does not stop workflow.	Telephone conference within 2 Standard Business Days of initial notification	Resolve in a future Supplemental Release
5	Customer request for an enhancement to System functionality is submitted to Seller's Product Management for review.	Seller's Product Management response within 120 Standard Business Days.	If accepted, a release date will be provided with a fee schedule, when appropriate.

1.1 **Reporting a Problem.** Customer shall assign an initial Severity Level for each error reported, either verbally or in writing, based upon the definitions listed above. Because of the urgency involved, Severity Level 1 or 2 problems must be reported verbally to the Seller's call intake center. Seller will notify the Customer if Seller makes any changes in Severity Level (up or down) of any Customer-reported problem.

1.2 **Seller Response.** Seller will use best efforts to provide Customer with a resolution within the appropriate Target Resolution Time and in accordance with the assigned Severity Level when Customer allows timely access to System and Seller diagnostics indicate that a Residual Error is present in the Software. Target Resolution Times may not apply if an error cannot be reproduced on a regular basis on either Seller's or Customer's Systems. Should Customer report an error that Seller cannot reproduce, Seller may enable a detail error capture/logging process to monitor the System. Should Seller determine that it is unable to correct such reported Residual Error within the specified Target Resolution Time, Seller will escalate its procedure and assign such personnel or designee to correct such Residual Error promptly. Should Seller, in its sole discretion, determine that such Residual Error is not present in its release, Seller will verify: (a) the Software operates in conformity to the System Specifications, (b) the Software is being used in a manner for which it was intended or designed, or (c) the Software is used only with approved hardware or software. The Target Resolution Time shall not commence until such time as the verification procedures are completed.

1.3 **Error Correction Status Report.** Seller will provide verbal status reports on Severity Level 1 and 2 Residual Errors. Written status reports on outstanding Residual Errors will be provided to System Administrator on a monthly basis.

2. **Customer Responsibility.**

2.1 Customer is responsible for running any Anti-Virus software installed by Seller as part of its System.

2.2 Operating System ("OS") Upgrades. Unless otherwise stated herein, Customer is responsible for any OS upgrades to its System. Before installing any OS upgrade, Customer should contact Seller to verify that a given OS upgrade is appropriate.

3. Seller Responsibility.

3.1 Anti-virus software. At Customer's request, Seller will make every reasonable effort to test and verify specific anti-virus, anti-worm, or anti-hacker patches against a replication of Customer's application. Seller will respond to any reported problem as an escalated support call.

3.2 Customer Notifications. Seller shall provide access to (a) Field Changes; (b) Customer Alert Bulletins; and (c) hardware and firmware updates, as released.

3.3 Account Reviews. Seller shall provide annual account reviews to include (a) service history of site; (b) downtime analysis; and (c) service trend analysis.

3.4 Remote Installation. At Customer's request, Seller will provide remote installation advice or assistance for Updates.

3.5 Software Release Compatibility. At Customer's request, Seller will provide: (a) current list of compatible hardware operating system releases; and (b) a list of Seller's Software Supplemental or Standard Releases

3.6 On-Site Correction. Unless otherwise stated herein, all suspected Residual Errors will be investigated and corrected from Seller's facilities. Seller shall decide whether on-site correction of any Residual Error is required and will take appropriate action.

**Exhibit C**  
**SUPPORT PLAN OPTIONS AND PRICING WORKSHEET**

Maintenance and Support Agreement

Agreement Start Date: March 1, 2003

<b>CUSTOMER:</b> City of College Station Address (1): Address (2): CITY, STATE, ZIP CODE: TX <b>CONTACT NAME:</b> CONTACT TITLE TELEPHONE: FAX: Email:	<b>BILLING AGENCY:</b> Address (1): Address (2): CITY, STATE, ZIP CODE: <b>CONTACT NAME:</b> CONTACT TITLE TELEPHONE: FAX: Email:
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**For support on products below, please contact Motorola at (800) 323-9949 (press 2) to request support.**

<input checked="" type="checkbox"/> Premier MDC™	<input checked="" type="checkbox"/> Premier MDC™ Message Switch	<input type="checkbox"/> Premier MDC™ Select	<input type="checkbox"/> Premier MDC™ Select Message Switch
<input type="checkbox"/> Premier MDC™ Reporting	<input type="checkbox"/> TalkThru/RF Plus	<input type="checkbox"/> TalkThru/RF Plus Message Switch	<input type="checkbox"/> Premier Handheld
<input type="checkbox"/> Premier Handheld Citation	<input type="checkbox"/> Premier 2Way	<input type="checkbox"/> AirMobile™	<input type="checkbox"/> TxMessenger™

<b>SOFTWARE SUPPORT</b>	<b>ANNUAL FEE</b>	
<input checked="" type="checkbox"/> <b>GOLD</b>	\$ 24,756	
◆ 24 hours a day, 7 days a week PPM		
◆ Supplemental Releases		
◆ Standard Releases		
◆ Technical Support Services		
<b>SOFTWARE SUPPORT TOTAL</b>		
<b>\$ 24,756</b>		

<b>OTHER AVAILABLE OPTIONS</b>		
<input type="checkbox"/> Consulting Services - 8 Hour Blocks (plus travel fees)		\$
<input checked="" type="checkbox"/> Other: Escrow		\$ 500
<b>OTHER OPTIONS TOTAL</b>		<b>\$ 500</b>

**FULL TERM FEE GRAND TOTAL\* \$ 25,256**

*\*Exclusive of taxes if applicable*

From: DAVID LITTLE (858)404-4335  
MOTOROLA INC  
6450 Sequence Drive  
San Diego, CA, 92121

REVENUE BARCODE

**FedEx.**

To: Roxanne Nemcik (979)764-3746  
City of College Station  
1101 Texas Avenue  
College Station, TX, 77845

SHIP DATE: 28MAY03  
WEIGHT: 1 LBS

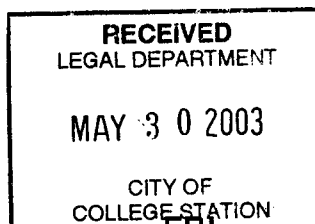
Ref:



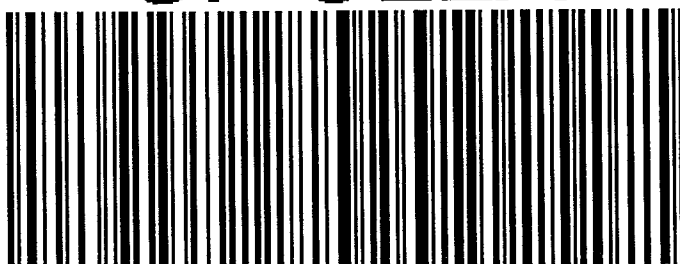
DELIVERY ADDRESS BARCODE (FEDEX-EDR)

TRK # 7913 9314 5512 69201

FedEx \*\* 2DAY \*\*

FRI  
AADeliver by:  
30MAY03

77845-TX-US

IAH  
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1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

**Warning:** Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on [fedex.com](http://fedex.com). FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.